

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
CONTRA COSTA WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
AND FOR FACILITIES REPAYMENT

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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4 UNITED STATES  
5 DEPARTMENT OF THE INTERIOR  
6 BUREAU OF RECLAMATION  
7 Central Valley Project, California

8 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
9 AND  
10 CONTRA COSTA WATER DISTRICT  
11 PROVIDING FOR PROJECT WATER SERVICE  
12 AND FOR FACILITIES REPAYMENT

13 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, in  
14 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
15 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
16 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
17 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
18 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992  
19 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between  
20 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and  
21 CONTRA COSTA WATER DISTRICT, hereinafter referred to as the Contractor, a public  
22 agency of the State of California, duly organized, existing, and acting pursuant to the laws  
23 thereof;

24 WITNESSETH, That:

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EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the Contractor has constructed the Los Vaqueros Project, that is intended to exclusively serve the Contractor to assist in attaining its goals of providing high quality water to the Contractor customers, while also providing reliability to the Contractor’s existing contract water supply during emergencies, droughts or other water shortages; and

[2.1] WHEREAS, it is necessary for the Contractor and the United States to agree on how the Los Vaqueros Project will be utilized in conjunction with Project Water and Project facilities; and

[3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. I75r-3401, on September 18, 1951, which established terms for the delivery to the Contractor of Project Water and for construction and repayment of certain facilities. This contract was amended on November 9, 1970, April 26 1973, May 26, 1994 (hereinafter referred to as Existing Contract), and February 7, 2000.

[4.1] WHEREAS, the United States and the Contractor executed Memorandum of Agreement No. 14-06-200-6072A dated June 28, 1972, and subsequent Amendment 1 dated

48 May 15, 1995, that requires the Contractor to operate and maintain the Contra Costa Canal  
49 System and Contra Loma Dam and Reservoir; and

50 [5<sup>th</sup>] WHEREAS, the United States and the Contractor have, pursuant to  
51 Subsection 3404 (c) (3) of the Central Valley Project Improvement Act (CVPIA), subsequently  
52 entered into a binding agreement, identified as Binding Agreement No. I75r-3401-BA, and  
53 Supplemental Agreement No. I75r-3401-SA, which sets out the terms pursuant to which the  
54 Contractor agreed to renew the Existing Contract before its expiration date after completion of a  
55 programmatic environmental impact statement (PEIS) and other appropriate environmental  
56 documentation and negotiation of a renewal contract, and which also sets out the consequences  
57 of a subsequent decision not to renew; and

58 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
59 Existing Contract following completion of appropriate environmental documentation, including a  
60 PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and  
61 indirect impacts and benefits of implementing the CVPIA and the potential renewal of all  
62 existing contracts for Project Water; and

63 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
64 environmental review necessary to provide for long-term renewal of the Existing Contract; and

65 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
66 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws  
67 of the State of California, for water service from the Project; and

68 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
69 of its obligations under the Existing Contract; and

70 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
71 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
72 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
73 such that the Contractor has the capability and expects to utilize fully for reasonable and  
74 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
75 and

76 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban areas  
77 within California for more than 50 years, and is considered by the Contractor as an essential  
78 portion of its water supply; and

79 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the  
80 Contractor's, depend upon the continued availability of water, including water service from the  
81 Project; and

82 [13<sup>th</sup>] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28,  
83 2000, the United States and the State of California adopted a general target of continuously  
84 improving Delta water quality for all uses. The CALFED Agencies' target for providing safe,  
85 reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average  
86 concentrations at Clifton Forebay and other southern and central Delta drinking water intakes of  
87 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health  
88 protection using a cost-effective combination of alternative source waters, source control and  
89 treatment technologies; and

90 [14<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
91 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
92 Project for all Project purposes; and

93 [15<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
94 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
95 repayment of the Project as required by law; to guard reasonably against Project Water  
96 shortages; to achieve a reasonable balance among competing demands for use of Project Water;  
97 and to comply with all applicable environmental statutes, all consistent with the legal obligations  
98 of the United States relative to the Project; and

99 [16<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
100 relationship in order to achieve their mutual goals; and

101 [17<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
102 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

103 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
104 contained, it is hereby mutually agreed by the parties hereto as follows:

105 DEFINITIONS

106 1. When used herein unless otherwise distinctly expressed, or manifestly  
107 incompatible with the intent of the parties as expressed in this Contract, the term:

108 (a) “Calendar Year” shall mean the period January 1 through December 31,  
109 both dates inclusive;

110 (b) “Charges” shall mean the payments required by Federal Reclamation law  
111 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined  
112 annually by the Contracting Officer pursuant to this Contract;

113 (c) “Condition of Shortage” shall mean a condition respecting the Project  
114 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
115 Contract Total;

116 (c.1) “Contra Costa Canal System” shall mean the Contra Costa Canal,  
117 including the intake channel from Rock Slough, Clayton, and Ygnacio Relift Canals and  
118 pumping plants, the Martinez Reservoir and Pumping Plants 1, 2, 3, and 4, and such other  
119 facilities as may be authorized by Congress from time to time for rehabilitation or replacement  
120 thereof;

121 (c.2) “Contra Loma Dam and Reservoir” shall mean the dam, pumping plant,  
122 and reservoir constructed as an addition to the Contra Costa Canal System;

123 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly  
124 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
125 or regulation;

126 (e) “Contract Total” shall mean the maximum amount of water to which the  
127 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

128 (f) “Contractor's Service Area” shall mean the area to which the Contractor is  
129 permitted to provide Project Water under this Contract as described in Exhibit “A” attached  
130 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
131 without amendment of this Contract;

132 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
133 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

134 (h-i) Omitted

135 (j) “Full Cost Rate” shall mean an annual rate, as determined by the  
136 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
137 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M  
138 deficits funded, less payments, over such periods as may be required under Federal Reclamation

139 law, or applicable contract provisions. Interest will accrue on both the construction expenditures  
140 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
141 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated  
142 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes  
143 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules  
144 and Regulations for the RRA;

145 (k - 1) Omitted;

146 (m) "Irrigation Water" shall mean water made available from the Project that  
147 is used primarily in the production of agricultural crops or livestock, including domestic use  
148 incidental thereto, and watering of livestock;

149 (n) Omitted;

150 (n.1) "Lateral Distribution System" shall mean the water conveyance system  
151 constructed by the United States which consists of pipelines extending to Contractor's water  
152 users from the Contra Costa Canal at milepost 5.3, 6.2, 7.1, 7.3, 9.1, 14.0, 25.6, 36.6, and Y-2-6;

153 (n.2) "Los Vaqueros" shall mean the Los Vaqueros Project consisting of a  
154 storage reservoir and associated facilities constructed by the Contractor on property which is  
155 owned by the Contractor, and in which the United States has no legal interest, to store and  
156 convey Los Vaqueros Water Rights Water and Project Water as well as additional water that  
157 may be acquired by the Contractor;

158 (n.3) "Los Vaqueros Water Rights Water" shall mean that water appropriated  
159 pursuant to State Water Rights Application 20245 (Permit 20749), which is in addition to Project  
160 Water;

161                   (o)     “Municipal and Industrial (M&I) Water” shall mean Project Water, other  
162 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for  
163 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)  
164 which are kept for personal enjoyment or water delivered to landholdings operated in units of  
165 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer  
166 that the use of water delivered to any such landholding is a use described in subdivision (m) of  
167 this Article;

168                   (p)     “M&I Full Cost Water Rate” shall mean the Full Cost Rate (applicable to  
169 the delivery of M&I Water;

170                   (p.1)   “New Facilities” shall mean the Short Cut Pipeline located between  
171 Contra Costa Canal at milepost 25.70 and at milepost 47.77 and the Pump Units in Pumping  
172 Plant 1, 2, 3, and 4 of the Contra Costa Canal System;

173                   (1)     “Pump Units” shall mean the pump, motor, motor controls, wiring,  
174 structural supports and discharge control apparatus for pumping 100 cubic feet per second  
175 (“cfs”) of water; and

176                   (2)     “Short Cut Pipeline” shall mean the Contra Costa Canal intake,  
177 pipeline, pipeline appurtenances, Martinez Reservoir inlet;

178                   (q)     “Operation and Maintenance” or “O&M” shall mean normal and  
179 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
180 maintenance of Project facilities;

181                   (r)     Omitted.

182                   (s)     “Project” shall mean the Central Valley Project owned by the United  
183 States and managed by the Department of the Interior, Bureau of Reclamation;

184 (t) “Project Contractors” shall mean all parties who have water service  
185 contracts for Project Water from the Project with the United States pursuant to Federal  
186 Reclamation law;

187 (u) “Project Water” shall mean all water that is developed, diverted, stored, or  
188 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
189 accordance with the terms and conditions of water rights acquired pursuant to California law;

190 (u.1) “Project Works” shall mean all those facilities defined in subsections (c.1),  
191 (c.2), (n.1), and (p.1) of this Article;

192 (v) “Rates” shall mean the payments determined annually by the Contracting  
193 Officer in accordance with the then current applicable water ratesetting policies for the Project,  
194 as described in subdivision (a) of Article 7 of this Contract;

195 (w) “Recent Historic Average” shall mean the most recent five-year average of  
196 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
197 preceding contract(s);

198 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed  
199 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
200 through any agency of the Department of the Interior;

201 (y) “Tiered Pricing Component” shall be the incremental amount to be paid  
202 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

203 (z) “Water Delivered” or “Delivered Water” shall mean Project Water  
204 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
205 Officer;

206 (aa) "Water Made Available" shall mean the estimated amount of Project  
207 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
208 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

209 (bb) "Water Scheduled" shall mean Project Water made available to the  
210 Contractor for which times and quantities for delivery have been established by the Contractor  
211 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

212 (cc) "Year" shall mean the period from and including March 1 of each  
213 Calendar Year through the last day of February of the following Calendar Year.

214 TERM OF CONTRACT

215 2. (a) This Contract shall be effective March 1, 2005, through February 28,  
216 2045. This Contract when effective supersedes the Existing Contract. In the event the  
217 Contractor wishes to renew this Contract beyond February 28, 2045, the Contractor shall submit  
218 a request for renewal in writing to the Contracting Officer no later than two years prior to the  
219 date this Contract expires.

220 (b) Omitted;

221 (c) This Contract shall be renewed for successive periods of up to 40 years  
222 each, which periods shall be consistent with the then-existing Reclamation-wide policy, under  
223 terms and conditions mutually agreeable to the parties and consistent with Federal and State law.  
224 The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the  
225 proposed adoption and application of any revised policy applicable to the delivery of M&I Water  
226 that would limit the term of any subsequent renewal contract with the Contractor for the  
227 furnishing of M&I Water to less than 40 years.

228           (d)     The Contracting Officer shall make a determination ten years after the  
229 date of execution of this Contract and every five years thereafter during the term of this Contract  
230 of whether a conversion of this Contract to a contract under subsection 9 (c)(1) of the  
231 Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that  
232 during the term of this Contract, all authorized Project construction expected to occur will have  
233 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all  
234 costs that are properly assignable to the Contractor, and agrees further that, at any time after such  
235 allocation is made, and subject to satisfaction of the condition set out in this subdivision this  
236 Contract shall, at the request of the Contractor, be converted to a contract under said subsection  
237 (c)(1) of Section 9, is applicable of the Reclamation Project Act of 1939, subject to applicable  
238 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the  
239 Contracting Officer. A condition for such conversion to occur shall be a determination by the  
240 Contracting Officer that, account being taken of the amount credited to return by the Contractor  
241 as provided for under Federal Reclamation law, the remaining amount of construction costs  
242 assignable for ultimate return by the Contractor can probably be repaid to the United States  
243 within the term of a contract under said subsection (c) (1) of Section 9. If the remaining amount  
244 of costs that are properly assignable to the Contractor cannot be determined during the term of  
245 this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why  
246 such a determination could not be made. Further, the Contracting Officer shall make such a  
247 determination as soon thereafter as possible so as to permit, upon request of the Contractor and  
248 satisfaction of the conditions set out above, conversion to a contract under said subsection (c)(1)  
249 of Section 9. In the event such determination of costs has not been made at a time which allows  
250 conversion of this Contract during the term of this Contract or the Contractor has not requested

251 conversion of this Contract within such term, the parties shall incorporate in any subsequent  
252 renewal contract as described in subdivision (b) of this Article a provision that carries forth in  
253 substantially identical terms the provisions of this subdivision.

254 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

255 3. (a) During each Year, consistent with all applicable State water rights,  
256 permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of  
257 this Contract, the Contracting Officer shall make available for delivery to the Contractor 195,000  
258 acre-feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance  
259 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and  
260 7 of this Contract.

261 (b) Because the capacity of the Project to deliver Project Water has been  
262 constrained in recent years and may be constrained in the future due to many factors including  
263 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
264 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this  
265 Article in any given Year is uncertain. The Contracting Officer's most recent modeling  
266 referenced in the PEIS projected that the Contract Total set forth in this Contract will not be  
267 available to the Contractor in many years. During the most recent five years, the Recent Historic  
268 Average of Water Made Available to the Contractor was 152,100 acre-feet. Nothing in  
269 subdivision (b) of this Article shall affect the rights and obligations of the parties under any  
270 provision of this Contract.

271 (c) The Contractor shall utilize the Project Water in accordance with all  
272 applicable legal requirements.

273                   (d)     The Contractor shall make reasonable and beneficial use of all Project  
274 Water and other water furnished pursuant to subdivision (f) of this Article. Groundwater  
275 recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water  
276 storage programs, and other similar programs utilizing Project Water or other water furnished  
277 pursuant to this Contract conducted within the Contractor's Service Area which are consistent  
278 with applicable State law and result in use consistent with Federal Reclamation law will be  
279 allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's  
280 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further,  
281 That such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's  
282 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated  
283 to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater  
284 recharge programs, groundwater banking programs, surface water storage programs, and other  
285 similar programs utilizing Project Water or other water furnished pursuant to this Contract  
286 conducted outside the Contractor's Service Area may be permitted upon written approval of the  
287 Contracting Officer, which approval will be based upon environmental documentation, Project  
288 Water rights, and Project operational concerns. The Contracting Officer will address such  
289 concerns in regulations, policies, or guidelines.

290                   (e)     The Contractor shall comply with requirements applicable to the  
291 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
292 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),  
293 as amended, that are within the Contractor's legal authority to implement. The Existing  
294 Contract, which evidences in excess of 50 years of diversions for irrigation and/or M&I purposes  
295 of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be

296 considered in developing an appropriate baseline for biological assessment(s) prepared pursuant  
297 to the ESA, and any other needed environmental review. Nothing herein shall be construed to  
298 prevent the Contractor from challenging or seeking judicial relief in a court of competent  
299 jurisdiction with respect to any biological opinion or other environmental documentation referred  
300 to in this Article.

301 (f) Following the declaration of Water Made Available under Article 4 of this  
302 Contract, the Contracting Officer will make a determination whether Project Water, or other  
303 water available to the Project, can be made available to the Contractor in addition to the Contract  
304 Total under this Article during the Year without adversely impacting other Project Contractors.  
305 At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to  
306 making such a determination. If the Contracting Officer determines that Project Water, or other  
307 water available to the Project, can be made available to the Contractor, the Contracting Officer  
308 will announce the availability of such water and shall so notify the Contractor as soon as  
309 practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
310 Contractors capable of taking such water to determine the most equitable and efficient allocation  
311 of such water. If the Contractor requests the delivery of any quantity of such water, the  
312 Contracting Officer shall make such water available to the Contractor in accordance with  
313 applicable statutes, regulations, guidelines, and policies.

314 (g) The Contractor may request permission to reschedule for use during the  
315 subsequent Year some or all of the Water Made Available to the Contractor during the current  
316 Year, referred to as “rescheduled water.” The Contractor may request permission to use during  
317 the current Year, a quantity of Project Water which may be made available by the United States  
318 to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s

319 written approval may permit such uses in accordance with applicable statutes, regulations,  
320 guidelines, and policies.

321 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
322 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract  
323 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this  
324 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all  
325 of its obligations under this Contract and any renewals thereof. Nothing in the preceding  
326 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or  
327 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal  
328 contracts.

329 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
330 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract  
331 upon written approval by the Contracting Officer in accordance with the terms and conditions of  
332 such approval.

333 (j) The Contracting Officer shall make reasonable efforts to protect the water  
334 rights necessary for the Project and to provide the water available under this Contract. The  
335 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
336 extent permitted by law, in administrative proceedings related to the Project Water rights;  
337 Provided, That the Contracting Officer retains the right to object to the substance of the  
338 Contractor's position in such a proceeding; Provided further, That in such proceedings the  
339 Contracting Officer shall recognize the Contractor has a legal right under the terms of this  
340 Contract to use Project Water.

341 TIME FOR DELIVERY OF WATER

342 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
343 shall announce the Contracting Officer’s expected declaration of the Water Made Available.  
344 Such declaration will be expressed in terms of both Water Made Available and the Recent  
345 Historic Average and will be updated monthly, and more frequently if necessary, based on then-  
346 current operational and hydrologic conditions and a new declaration with changes, if any, to the  
347 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project  
348 operations and the basis of the estimate, with relevant supporting information, upon the written  
349 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
350 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

351 (b) On or before each March 1 and at such other times as necessary, the  
352 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
353 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
354 United States to the Contractor pursuant to this Contract for the Year commencing on such  
355 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
356 according to the approved schedule for the Year commencing on such March 1.

357 (c) The Contractor shall not schedule Project Water in excess of the quantity  
358 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
359 Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract  
360 during any Year.

361 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
362 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
363 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any

364 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
365 time prior to the date(s) on which the requested change(s) is/are to be implemented.

366 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

367 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
368 Contract shall be delivered to the Contractor at Rock Slough at the intake of Pumping Plant 1 of  
369 the Contra Costa Canal System or in the Sacramento-San Joaquin Delta at the intake and any  
370 additional point or points of delivery either on Project facilities or another location or locations  
371 mutually agreed to in writing by the Contracting Officer and the Contractor. Such deliveries at  
372 the Sacramento-San Joaquin Delta may be made at the intake to the Tracy Pumping Plant of the  
373 Project at Old River, the intake of the State Water Project to Clifton Court at Old River and/or  
374 the intake to Los Vaqueros at Old River. Los Vaqueros Water Rights Water shall be delivered  
375 and/or diverted in the Sacramento-San Joaquin Delta. Said point(s) of delivery and/or diversion  
376 of Project Water and Los Vaqueros Water Rights Water shall be subject to change by written  
377 agreements of the parties hereto: Provided, That such change(s) is/are consistent with the  
378 applicable state water right permit(s) or license(s) as they may be amended or modified. The  
379 United States shall not be obligated to construct additional facilities for the delivery and/or  
380 diversion of water under this Contract.

381 (b) Omitted.

382 (c) The Contractor shall not deliver Project Water to land outside the  
383 Contractor's Service Area unless approved in advance by the Contracting Officer.

384 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
385 measured and recorded with equipment furnished, installed, operated, and maintained by the  
386 United States, or the Contractor at the point or points of delivery established pursuant to

387 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting  
388 Officer or the Contractor shall investigate the accuracy of such measurements and shall take any  
389 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
390 measurements have not been made, the Contracting Officer shall consult with the Contractor  
391 prior to making a final determination of the quantity delivered for that period of time.

392 (e) The Contracting Officer shall not be responsible for the control, carriage,  
393 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
394 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor  
395 shall indemnify the United States, its officers, employees, agents, and assigns on account of  
396 damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
397 including property damage, personal injury, or death arising out of or connected with the control,  
398 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery  
399 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting  
400 Officer or any of its officers, employees, agents, or assigns, with the intent of creating the  
401 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
402 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or  
403 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a  
404 malfunction of facilities owned and/or operated by the United States; Provided, That the  
405 Contractor is not the entity that owned or operated the malfunctioning facility(ies) from which  
406 the damage claim arose.

407 (f) Water diverted by the Contractor pursuant to this Contract shall be  
408 measured and recorded by the Contractor for each of the points set forth below through  
409 measuring and recording devices, acceptable to the Contracting Officer: Provided, The parties

410 thereto, may agree in writing that such points and/or method of water measurement may be  
411 changed or added to. Except for Rock Slough at the intake of Pumping Plant 1, the Contractor  
412 shall O&M each of the measuring and recording devices at no cost to the United States. The  
413 Contractor shall install all measuring and recording devices:

414 (1) At the intake to Pumping Plant 1 of the Contra Costa Canal  
415 System;

416 (2) At the Los Vaqueros intake in Old River;

417 (3) At the intake to the Los Vaqueros storage reservoir; and

418 (4) At the point at which the Los Vaqueros Water Rights Water and  
419 Project Water diverted from other than Rock Slough are introduced into the Contra Costa Canal  
420 System from Los Vaqueros;

421 (g) The Contractor shall measure or compute and record daily, or at such  
422 other intervals as may be agreed upon in writing by the parties, and provide to the United States  
423 on or before the 20<sup>th</sup> day of each month following the month in which the measurement or  
424 computation was made the rates and quantities associated with the following:

425 (1) Diversion of Project Water at Rock Slough;

426 (2) Diversion of Project Water from Old River for direct use;

427 (3) Diversion of Los Vaqueros Water Rights Water to storage in Los  
428 Vaqueros storage reservoir;

429 (4) Diversion of Project Water to storage in Los Vaqueros storage  
430 reservoir;

431 (5) Diversion to storage in Contra Loma Dam and Reservoir;

432 (6) Withdrawal of Project Water from Los Vaqueros storage reservoir;

433 (7) Withdrawal of Los Vaqueros Water Rights Water from Los  
434 Vaqueros storage reservoir;

435 (8) Withdrawal of water from Contra Loma Dam and Reservoir for  
436 delivery to the East Bay Regional Park District pursuant to Contract No. 4-06-200-6023A, dated  
437 September 18, 1972, as amended on November 29, 1977;

438 (9) Withdrawal of water from Contra Loma Dam and Reservoir for  
439 purposes other than that specified in subdivision (g)(8) above; and

440 (10) Total M&I water distributed.

441 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

442 6. (a) The Contractor has established a measuring program satisfactory to the  
443 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I  
444 purposes within the Contractor's Service Area is measured at each M&I service connection. The  
445 water measuring devices or water measuring methods of comparable effectiveness must be  
446 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,  
447 operating, and maintaining and repairing all such measuring devices and implementing all such  
448 water measuring methods at no cost to the United States. The Contractor shall use the  
449 information obtained from such water measuring devices or water measuring methods to ensure  
450 its proper management of the water, to bill water users for water delivered by the Contractor;  
451 and, if applicable, to record water delivered for M&I purposes by customer class as defined in  
452 the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing  
453 herein contained, however, shall preclude the Contractor from establishing and collecting any  
454 charges, assessments, or other revenues authorized by California law. The Contractor shall

455 include a summary of all its annual surface water deliveries in the annual report described in  
456 subdivision (c) of Article 26.

457           (b) To the extent the information has not otherwise been provided, upon  
458 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
459 report describing the measurement devices or water measuring methods being used or to be used  
460 to implement subdivision (a) of this Article and identifying the M&I service connections or  
461 alternative measurement programs approved by the Contracting Officer, at which such  
462 measurement devices or water measuring methods are being used, and, if applicable, identifying  
463 the locations at which such devices and/or methods are not yet being used including a time  
464 schedule for implementation at such locations. The Contracting Officer shall advise the  
465 Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of  
466 the measuring devices or water measuring methods identified in the Contractor's report and if the  
467 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
468 Contracting Officer notifies the Contractor that the measuring devices or methods are  
469 inadequate, the parties shall within 60 days following the Contracting Officer's response,  
470 negotiate in good faith the earliest practicable date by which the Contractor shall modify said  
471 measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
472 compliance with subdivision (a) of this Article.

473           (c) All new surface water delivery systems installed within the Contractor's  
474 Service Area after the effective date of this Contract shall also comply with the measurement  
475 provisions described in subdivision (a) of this Article.

476 (d) The Contractor shall inform the Contracting Officer and the State of  
477 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
478 within the Contractor’s Service Area during the previous Year.

479 (e) Omitted.

480 RATES AND METHOD OF PAYMENT FOR WATER

481 7. (a) The Contractor shall pay the United States as provided in this Article for  
482 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in  
483 accordance with: (i) the Secretary’s then-existing Project ratesetting policy for M&I Water.  
484 Such ratesetting policies shall be amended, modified, or superseded only through a public notice  
485 and comment procedure; (ii) applicable Federal Reclamation law and associated rules and  
486 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be  
487 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to  
488 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
489 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit  
490 “B,” as may be revised annually.

491 (a.1) The payment to be made by the Contractor for Los Vaqueros Water Rights  
492 Water and Project Water Made Available to it pursuant to this Contract shall be the applicable  
493 Rates and Charges determined annually in accordance with the applicable Federal law and  
494 associated regulations.

495 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
496 and Tiered Pricing Component as follows:

497 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
498 provide the Contractor an estimate of the Charges for Project Water that will be applied to the

499 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
500 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months  
501 to review and comment on such estimates. On or before September 15 of each Calendar Year,  
502 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during  
503 the period October 1 of the current Calendar Year, through September 30, of the following  
504 Calendar Year, and such notification shall revise Exhibit "B."

505 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
506 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components  
507 for Project Water for the following Year and the computations and cost allocations upon which  
508 those Rates are based. The Contractor shall be allowed not less than two months to review and  
509 comment on such computations and cost allocations. By December 31 of each Calendar Year,  
510 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
511 Components to be in effect for the upcoming Year, and such notification shall revise Exhibit  
512 "B."

513 (c) At the time the Contractor submits the initial schedule for the delivery of  
514 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
515 Contractor shall make an advance payment to the United States equal to the total amount payable  
516 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
517 scheduled to be delivered pursuant to this Contract during the first two calendar months of the  
518 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
519 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
520 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
521 during the second month immediately following. Adjustments between advance payments for

522 Water Scheduled and amounts due for Water Delivered shall be made before the end of the  
523 following month; Provided, That any revised schedule submitted by the Contractor pursuant to  
524 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
525 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
526 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such  
527 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
528 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
529 additional Project Water shall be delivered to the Contractor unless and until an advance  
530 payment at the Rates then in effect for such additional Project Water is made. Final adjustment  
531 between the advance payments for the Water Scheduled and payments for the quantities of Water  
532 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
533 later than April 30th of the following Year, or 60 days after the delivery of Project Water  
534 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by  
535 the last day of February.

536 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
537 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
538 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
539 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered  
540 as shown in the water delivery report for the subject month prepared by the Contractor. The  
541 water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered  
542 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of  
543 Charges shall be made through the adjustment of payments due to the United States for Charges

544 for the next month. Any amount to be paid for past due payment of Charges and the Tiered  
545 Pricing Component shall be computed pursuant to Article 20 of this Contract.

546 (e) The Contractor shall pay for any Water Delivered under subdivision (a),  
547 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
548 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
549 policies; Provided, That the Rates for Water Delivered under subdivision (f) of Article 3 of this  
550 Contract shall be no more than the otherwise applicable Rates for M&I Water under subdivision  
551 (a) of this Article.

552 (f) Payments to be made by the Contractor to the United States under this  
553 Contract may be paid from any revenues available to the Contractor.

554 (g) All revenues received by the United States from the Contractor relating to  
555 the delivery of Project Water or the delivery of non-Project water through Project facilities shall  
556 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
557 regulations, and the then-current Project ratesetting policies for M&I Water.

558 (h) The Contracting Officer shall keep its accounts pertaining to the  
559 administration of the financial terms and conditions of its long-term contracts, in accordance  
560 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
561 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
562 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
563 disposition of all Project and Contractor revenues, and a summary of all water delivery  
564 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
565 to resolve any discrepancies or disputes relating to accountings, reports, or information.

566 (i) The parties acknowledge and agree that the efficient administration of this  
567 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
568 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,  
569 and/or for making and allocating payments, other than those set forth in this Article may be in  
570 the mutual best interest of the parties, it is expressly agreed that the parties may enter into  
571 agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
572 this Contract is in effect without amending this Contract.

573 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
574 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
575 delivery the Contractor shall make an additional payment to the United States equal to the  
576 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
577 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
578 Contract Total, shall equal one-half of the difference between the Rates established under  
579 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing  
580 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total  
581 shall equal the difference between (i) the Rates established under subdivision (a) of this Article  
582 and (ii) M&I Full Cost Water Rate.

583 (2) Omitted.

584 (3) For purposes of determining the applicability of the Tiered Pricing  
585 Components pursuant to this Article, Water Delivered shall include Project Water that the  
586 Contractor transfers to others but shall not include Project Water transferred to the Contractor,  
587 nor shall it include the additional water provided to the Contractor under the provisions of  
588 subdivision (f) of Article 3 of this Contract.

589 (4) The Tiered Pricing Component does not apply to Los Vaqueros  
590 Water Rights Water.

591 (k) For the term of this Contract, Rates applied under the respective  
592 ratesetting policies will be established to recover only reimbursable O&M (including any  
593 deficits) and capital costs of the Project, as those terms are used in the then-current Project  
594 ratesetting policies, and interest, where appropriate, except in instances where minimum Rates  
595 are applicable in accordance with the relevant Project ratesetting policy. Changes of significance  
596 in practices which implement the Contracting Officer's ratesetting policies will not be  
597 implemented until the Contracting Officer has provided the Contractor an opportunity to discuss  
598 the nature, need, and impact of the proposed change.

599 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
600 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
601 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting  
602 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in  
603 accordance with the then applicable Project ratesetting policy.

604 (m) Omitted.

605 (n) With respect to the Rates for M&I water, the Contractor asserts that it is  
606 not legally obligated to pay any Project deficits claimed by the United States to have accrued as  
607 of the date of this Contract or deficit-related interest charges thereon. By entering into this  
608 Contract, the Contractor does not waive any legal rights or remedies that it may have with  
609 respect to such disputed issues. Notwithstanding the execution of this Contract and payments  
610 made hereunder, the Contractor may challenge in the appropriate administrative or judicial  
611 forums; (1) the existence, the computation, or imposition of any deficit charges accruing during

612 the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the inclusion of  
613 any such deficit charges or interest in the Rates; (4) the application by the United States of  
614 payments made by the Contractor under its Existing Contract; and (5) the application of such  
615 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the  
616 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of  
617 these issues, and credits for payments heretofore made, provided that the basis for such ruling is  
618 applicable to the Contractor. [Pending Litigation]

619 REPAYMENT OF PROJECT WORKS

620 7.1. (a) Contra Costa Canal System. The remaining capitalized cost of the Contra  
621 Costa Canal System on December 31, 2004, will be \$839,101. The Contractor shall fully repay  
622 \$914,032.56, including interest at 2.5 percent per annum, by making six annual payments of  
623 \$152,338.76, beginning January 1, 2005, and ending January 1, 2010.

624 (b) New Facilities. The remaining capitalized cost of the New Facilities on  
625 December 31, 2004, will be \$1,446,457.07. The Contractor shall fully repay \$1,620,281.05, plus  
626 interest at 3.342 percent per annum, by making six annual payments of \$270,046.84 beginning  
627 January 1, 2005, and ending January 1, 2010.

628 (c) Contra Loma Dam and Reservoir. The remaining capitalized costs of the  
629 Contra Loma Dam and Reservoir on December 31, 2004, will be \$1,689,039.16. The Contractor  
630 shall fully repay \$1,879,257.85, including interest at 3.137 percent per annum, by making six  
631 annual payments of \$313,209.63 beginning January 1, 2005, and ending January 1, 2010.

632 (d) The Contractor may, instead of making the payments provided for in  
633 subdivisions (a), (b), and (c) above, at any time, make full payment of the sum then due and  
634 owing on any or all of the facilities described in those subdivisions: Provided, That the

635 Contractor agrees that such accelerated repayment shall not exempt the Contractor from  
636 compliance with the otherwise applicable ownership and full cost pricing provisions of Federal  
637 Reclamation laws. If payment is made at any time in the year other than that specified in  
638 subdivisions (a), (b), and (c) of this Article, the remaining payment balance as of such date will  
639 be determined by the Contracting Officer and provided to the Contractor. Upon full repayment,  
640 the Contractor shall have no further repayment obligations associated with the capitalized costs  
641 specified in subdivisions (a), (b), and (c) of this Article.

642 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

643 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
644 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further  
645 liability therefore.

646 SALES, TRANSFERS, OR EXCHANGES OF WATER

647 9. (a) The right to receive Project Water provided for in this Contract may be  
648 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
649 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
650 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
651 Water under this Contract may take place without the prior written approval of the Contracting  
652 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
653 exchanges shall be approved absent all appropriate environmental documentation, including but  
654 not limited to, documents prepared pursuant to the NEPA and ESA. Such environmental  
655 documentation should include, as appropriate, an analysis of groundwater impacts and economic  
656 and social effects, including environmental justice, of the proposed water transfers on both the  
657 transferor and transferee.

658                   (b)     In order to facilitate efficient water management by means of water  
659 transfers of the type historically carried out among Project Contractors located within the same  
660 geographical area and to allow the Contractor to participate in an accelerated water transfer  
661 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,  
662 all necessary environmental documentation including but not limited to documents prepared  
663 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas and the  
664 Contracting Officer shall determine whether such transfers comply with applicable law.  
665 Following the completion of the environmental documentation, such transfers addressed in such  
666 documentation shall be conducted with advance notice to the Contracting Officer, but shall not  
667 require prior written approval by the Contracting Officer. Such environmental documentation  
668 and the Contracting Officer's compliance determination shall be reviewed every five years and  
669 updated, as necessary, prior to the expiration of the then existing five-year period. All  
670 subsequent environmental documentation shall include an alternative to evaluate not less than the  
671 quantity of Project Water historically transferred within the same geographical area.

672                   (c)     For a water transfer to qualify under subdivision (b) of this Article, such  
673 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three  
674 years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater  
675 activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and  
676 be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur  
677 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water  
678 through existing facilities with no new construction or modifications to facilities and be between  
679 existing Project Contractors and/or the Contractor and the United States, Department of the  
680 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and

681 requirements imposed for protection of the environment and Indian Trust Assets, as defined  
682 under Federal law.

683 PROJECT USE POWER

684 9.1. (a) During each Year, the United States shall furnish to the Contractor the  
685 quantity of Project use power, not to exceed 164.8 kWh of energy for each acre-foot of Project  
686 Water or Los Vaqueros Water Rights Water, required to operate facilities needed to pump  
687 through the Contra Costa Canal System and Contra Loma Dam and Reservoir the full quantity of  
688 Project Water scheduled and the Los Vaqueros Water Rights Water forecasted for delivery and  
689 diversion to and by the Contractor for use within the Contractor's Service Area during that Year.  
690 Such quantity of Project use power may be utilized at one or more of the following locations: the  
691 Contra Costa Canal System; the intake of Los Vaqueros in Old River; Contra Loma Dam and  
692 Reservoir; and such other points of diversion set forth in Article 5(a) as may be mutually agreed  
693 upon. Project use power can only be used to convey Project Water or Los Vaqueros Water  
694 Rights Water and shall be available to pump no more than 195,000 acre-feet annually.

695 (b) The United States may, at any time, request in writing that the Contractor  
696 take delivery of some or all of the Project Water Made Available to the Contractor pursuant to  
697 this Contract at the point of diversion for Los Vaqueros Water Rights Water in lieu of taking  
698 delivery of such water at the intake of Pumping Plant 1 of the Contra Costa Canal System at  
699 Rock Slough. If the Contractor agrees in writing to such a request, the United States shall  
700 furnish to the Contractor during the term of the agreement, the quantity of Project use power  
701 required to pump said Project Water and Los Vaqueros Water Rights Water from the point of  
702 diversion for Los Vaqueros Water Rights Water to the Los Vaqueros transfer reservoir, not to  
703 exceed 350 kWh of energy per acre-foot; Provided, That such a written agreement by the parties

704 for the delivery to and diversion at the point of diversion for Los Vaqueros Water Rights Water  
705 of the full supply of Project Water Made Available under this Contract during the term of such  
706 agreement shall not be implemented absent modification acceptable to the Contracting Officer of  
707 applicable Sacramento-San Joaquin Delta water quality standards during the entire term of such  
708 agreement.

709 (c) If the Contracting Officer and the Contractor are required under any  
710 biological opinion issued by an agency of the United States to take delivery of some or all of the  
711 Project Water Made Available to the Contractor pursuant to this Contract at the point of  
712 diversion for Los Vaqueros Water Rights Water in lieu of taking delivery of such water at the  
713 intake to Pumping Plant 1 of the Contra Costa Canal System at Rock Slough, the United States  
714 shall furnish to the Contractor the quantity of Project use power required to pump said Project  
715 water from the point of diversion for Los Vaqueros Water Rights Water to the Los Vaqueros  
716 transfer reservoir, not to exceed 350 kWh of energy per acre-foot; Provided, That the quantity of  
717 Project use power furnished pursuant to this subdivision shall not exceed the quantity of Project  
718 use power needed to convey the quantity of Project Water diverted at the point of diversion of  
719 Los Vaqueros Water Rights Water for immediate delivery through the Contra Costa Canal; and  
720 Provided further, That the Contractor shall notify the Contracting Officer by March 1 of each  
721 calendar year, in accordance with the written schedules submitted pursuant to Article 4(b), of the  
722 projected quantity of Project Water which will be pumped with Project use power described in  
723 this subdivision.

724 (d) The Contractor shall pay the United States for the quantity of Project use  
725 power as set forth in subdivision (a), (b), and (c) above as a component of the water Rates  
726 described in Article 7(a) of this Contract.

727 (e) The Contracting Officer may adjust the quantity of Project use power  
728 required to pump each acre-foot of Project Water or Los Vaqueros Water Rights Water if the  
729 Contracting Officer determines based on substantial evidence that the actual energy required for  
730 such pumping is different from the quantity set forth in this Article. Such determinations and  
731 adjustments by the Contracting Officer shall not require further amendment to this Contract.

732 APPLICATION OF PAYMENTS AND ADJUSTMENTS

733 10. (a) The amount of any overpayment by the Contractor of the Contractor's  
734 O&M, interest, capital, and deficit (if any) obligations for the Year shall be applied first to any  
735 current liabilities of the Contractor arising out of this Contract then due and payable.  
736 Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a  
737 refund, any amount of such overpayment, at the option of the Contractor, may be credited against  
738 amounts to become due to the United States by the Contractor. With respect to overpayment,  
739 such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or  
740 claiming to have the right to the use of any of the Project Water supply provided for herein. All  
741 credits and refunds of overpayments shall be made within 30 days of the Contracting Officer  
742 obtaining direction as to how to credit or refund such overpayment in response to the notice to  
743 the Contractor that it has finalized the accounts for the Year in which the overpayment was  
744 made.

745 (b) All advances for miscellaneous costs incurred for work requested by the  
746 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs  
747 when the work has been completed. If the advances exceed the actual costs incurred, the  
748 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
749 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

TEMPORARY REDUCTIONS--RETURN FLOWS

750           11.   (a)    Subject to: (i) the authorized purposes and priorities of the Project and the  
751 requirements of Federal law and (ii) the obligations of the United States under existing contracts,  
752 or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall  
753 make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in  
754 this Contract.

755                   (b)    The Contracting Officer may temporarily discontinue or reduce the  
756 quantity of Water Delivered to the Contractor as herein provided for the purposes of  
757 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or  
758 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
759 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary  
760 discontinuance or reduction, except in case of emergency, in which case no notice need be given;  
761 Provided, That the United States shall use its best efforts to avoid any discontinuance or  
762 reduction in such service. Upon resumption of service after such reduction or discontinuance,  
763 and if requested by the Contractor, the United States will, if possible, deliver the quantity of  
764 Project Water which would have been delivered hereunder in the absence of such discontinuance  
765 or reduction.

766                   (c)    The United States reserves the right to all seepage and return flow water  
767 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
768 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
769 the United States any right to seepage or return flow being put to reasonable and beneficial use  
770 pursuant to this Contract within the Contractor's Service Area by the Contractor or those  
771 claiming by, through, or under the Contractor.

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CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) Omitted.

(d) Project Water furnished under this Contract will be allocated in accordance with the then existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superseded only through a public notice and comment procedure.

(e) By entering into this Contract, the Contractor does not waive any legal rights or remedies it may have to file or participate in any administrative or judicial proceeding contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the effective date of this Contract was promulgated; (ii) the substance of such a policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may then have to assert in such a proceeding.

13. Omitted.

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RULES AND REGULATIONS

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14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law, and any applicable rules and regulations promulgated by the Secretary of the Interior under such law.

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WATER AND AIR POLLUTION CONTROL

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15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

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QUALITY OF WATER

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16. (a) Project facilities used to deliver Project Water to the Contractor pursuant

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to this Contract shall be operated and maintained to enable the United States to deliver Project

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Water to the Contractor in accordance with the water quality standards specified in subsection

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2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of

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October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

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obligation to construct or furnish water treatment facilities to maintain or to improve the quality

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of Water Delivered to the Contractor pursuant to this Contract. The United States does not

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warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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(b) O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the

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highest level reasonably attainable as determined by the Contracting Officer. The Contractor

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shall be responsible for compliance with all State and Federal water quality standards applicable

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to surface and subsurface agricultural drainage discharges generated through the use of Federal

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or Contractor facilities or Project Water provided by the Contractor within the Contractor's

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Service Area.

820 WATER ACQUIRED BY THE CONTRACTOR  
821 OTHER THAN FROM THE UNITED STATES

822 17. (a) Omitted.

823 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
824 other than from the United States may be stored, conveyed, and/or diverted through Project  
825 facilities, other than Project Works, subject to the completion of appropriate environmental  
826 documentation, with the approval of the Contracting Officer and the execution of any contract  
827 determined by the Contracting Officer to be necessary, consistent with the following provisions:

828 (1) The Contractor may introduce non-Project water into Project  
829 facilities, other than Project Works, subject to payment to the United States of an appropriate rate  
830 as determined by the applicable Project ratesetting policy and the RRA, and the Project use  
831 power policy, if such Project use power policy is applicable, each as amended, modified, or  
832 superseded from time to time. In addition, if electrical power is required to pump non-Project  
833 water through the facilities, the Contractor shall be responsible for obtaining the necessary power  
834 and paying the necessary charges therefore.

835 (2) Delivery of such non-Project water in and through Project  
836 facilities, other than Project Works, shall only be allowed to the extent such deliveries do not:  
837 (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the  
838 quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery  
839 of contractual water entitlements to any other Project Contractors; or (iv) interfere with the  
840 physical maintenance of the Project facilities.

841 (c) The Contractor may use Project Works to convey non-Project water,  
842 subject to each of the following conditions:

843 (1) Such conveyance shall not interfere with deliveries of water  
844 hereunder;

845 (2) Non-Project water for irrigation use shall be utilized in accordance  
846 with the applicable acreage limitation provisions of the Federal Reclamation laws;

847 (3) Project use power shall not be used to pump or convey non-Project  
848 water except as provided for in Article 9.1(a);

849 (4) The United States shall not incur any liability or unreimbursed cost  
850 or expense thereby;

851 (5) The quantities of non-Project water introduced into and conveyed  
852 through the Project Works shall be measured or otherwise determined by the Contractor in a  
853 manner consistent with Article 6 of this Contract, acceptable to the Contracting Officer and at no  
854 cost to the United States;

855 (6) The amount the Contractor is to pay to the United States for  
856 conveying non-Project water through Project Works shall be determined annually by the United  
857 States in accordance with the applicable provisions of Federal law, including but not limited to  
858 the Warren Act of February 21, 1911 (36 Stat. 935), as amended and supplemented, associated  
859 regulations, and the then-current applicable federal ratesetting policies.

860 (d) The United States shall not be responsible for control, care, or distribution  
861 of the non-Project water before it is introduced into or after it is delivered from the Project  
862 facilities. The Contractor hereby releases and agrees to defend and indemnify the United States  
863 and their respective officers, agents, and employees, from any claim for damage to persons or  
864 property, direct or indirect, resulting from the Contractor's or its officers', employees', agents',

865 or assigns', act(s) of (i) extracting or diverting non-Project water from any source, or (ii)  
866 diverting such non-Project water into Project facilities.

867 (e) Diversion of such non-Project water into Project facilities shall be  
868 consistent with all applicable laws, and if involving groundwater, consistent with any applicable  
869 groundwater management plan for the area from which it was extracted.

870 (f) After Project purposes are met, as determined by the Contracting Officer,  
871 the United States and the Contractor shall share priority to utilize the remaining capacity of the  
872 facilities declared to be available by the Contracting Officer for storage, conveyance, and  
873 transportation of non-Project water prior to any such remaining capacity being made available to  
874 non-Project contractors.

875 OPINIONS AND DETERMINATIONS

876 18. (a) Where the terms of this Contract provide for actions to be based upon the  
877 opinion or determination of either party to this Contract, said terms shall not be construed as  
878 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
879 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
880 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
881 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
882 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is  
883 intended to or shall affect or alter the standard of judicial review applicable under Federal law to  
884 any opinion or determination implementing a specific provision of Federal law embodied in  
885 statute or regulation.

886 (b) The Contracting Officer shall have the right to make determinations  
887 necessary to administer this Contract that are consistent with the provisions of this Contract, the

888 laws of the United States and of the State of California, and the rules and regulations  
889 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
890 with the Contractor to the extent reasonably practicable.

891 COORDINATION AND COOPERATION

892 19. (a) In order to further their mutual goals and objectives, the Contracting  
893 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
894 with other affected Project Contractors, in order to improve the operation and management of the  
895 Project. The communication, coordination, and cooperation regarding operations and  
896 management shall include, but not be limited to, any action which will or may materially affect  
897 the quantity or quality of Project Water supply, the allocation of Project Water supply, and  
898 Project financial matters including, but not limited to, budget issues. The communication,  
899 coordination, and cooperation provided for hereunder shall extend to all provisions of this  
900 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,  
901 and determinations to be made by the respective party.

902 (b) Within 120 days following the effective date of this Contract, the  
903 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet  
904 with interested Project Contractors to develop a mutually agreeable, written Project-wide  
905 process, which may be amended as necessary separate and apart from this Contract. The goal of  
906 this process shall be to provide, to the extent practicable, the means of mutual communication  
907 and interaction regarding significant decisions concerning Project operation and management on  
908 a real-time basis.

909 (c) In light of the factors referred to in subdivision (b) of Article 3 of this  
910 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this  
911 intent:

912 (1) The Contracting Officer will, at the request of the Contractor,  
913 assist in the development of integrated resource management plans for the Contractor. Further,  
914 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
915 partnerships to improve water supply, water quality, and reliability.

916 (2) The Secretary will, as appropriate, pursue program and project  
917 implementation and authorization in coordination with Project Contractors to improve the water  
918 supply, water quality, and reliability of the Project for all Project purposes.

919 (3) The Secretary will coordinate with Project Contractors and the  
920 State of California to seek improved water resource management.

921 (4) The Secretary will coordinate actions of agencies within the  
922 Department of the Interior that may impact the availability of water for Project purposes.

923 (5) The Contracting Officer shall periodically, but not less than  
924 annually, hold division level meetings to discuss Project operations, division level water  
925 management activities, and other issues as appropriate.

926 (d) Without limiting the contractual obligations of the Contracting Officer  
927 under the other Articles of this Contract, nothing in this Article shall be construed to limit or  
928 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the  
929 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to  
930 protect health, safety, or the physical integrity of structures or facilities.

931

CHARGES FOR DELINQUENT PAYMENTS

932           20.   (a)    The Contractor shall be subject to interest, administrative and penalty  
933 charges on delinquent installments or payments. When a payment is not received by the due  
934 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
935 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
936 administrative charge to cover additional costs of billing and processing the delinquent payment.  
937 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
938 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the  
939 due date. Further, the Contractor shall pay any fees incurred for debt collection services  
940 associated with a delinquent payment.

941                   (b)    The interest charge rate shall be the greater of the rate prescribed quarterly  
942 in the Federal Register by the Department of the Treasury for application to overdue payments,  
943 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the  
944 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
945 determined as of the due date and remain fixed for the duration of the delinquent period.

946                   (c)    When a partial payment on a delinquent account is received, the amount  
947 received shall be applied, first to the penalty, second to the administrative charges, third to the  
948 accrued interest, and finally to the overdue payment.

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EQUAL OPPORTUNITY

950           21.    During the performance of this Contract, the Contractor agrees as follows:

951                   (a)    The Contractor will not discriminate against any employee or applicant for  
952 employment because of race, color, religion, sex, or national origin. The Contractor will take  
953 affirmative action to ensure that applicants are employed, and that employees are treated during  
954 employment, without regard to their race, color, religion, sex, or national origin. Such action  
955 shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
956 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of  
957 compensation; and selection for training, including apprenticeship. The Contractor agrees to  
958 post in conspicuous places, available to employees and applicants for employment, notices to be  
959 provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

960                   (b)    The Contractor will, in all solicitations or advertisements for employees  
961 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
962 consideration for employment without discrimination because of race, color, religion, sex, or  
963 national origin.

964                   (c)    The Contractor will send to each labor union or representative of workers  
965 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
966 to be provided by the Contracting Officer, advising the said labor union or workers'  
967 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of

968 September 24, 1965, and shall post copies of the notice in conspicuous places available to  
969 employees and applicants for employment.

970 (d) The Contractor will comply with all provisions of Executive Order  
971 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders  
972 of the Secretary of Labor.

973 (e) The Contractor will furnish all information and reports required by said  
974 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
975 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting  
976 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with  
977 such rules, regulations, and orders.

978 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
979 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
980 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
981 ineligible for further Government contracts in accordance with procedures authorized in said  
982 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
983 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
984 otherwise provided by law.

985 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
986 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
987 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
988 provisions will be binding upon each subcontractor or vendor. The Contractor will take such  
989 action with respect to any subcontract or purchase order as may be directed by the Secretary of  
990 Labor as a means of enforcing such provisions, including sanctions for noncompliance:  
991 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,  
992 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request  
993 the United States to enter into such litigation to protect the interests of the United States.

994 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

995 22. (a) The obligation of the Contractor to pay the United States as provided in  
996 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
997 obligation may be distributed among the Contractor's water users and notwithstanding the default  
998 of individual water users in their obligations to the Contractor.

999 (b) The payment of charges becoming due hereunder is a condition precedent  
1000 to receiving benefits under this Contract. The United States shall not make water available to the  
1001 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1002 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1003 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1004 advance payment of water rates levied or established by the Contractor.

1005 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
1006 obligation to require advance payment for water rates which it levies.

1007 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1008 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1009 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1010 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1011 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1012 U.S. Department of the Interior and/or Bureau of Reclamation.

1013 (b) These statutes require that no person in the United States shall, on the  
1014 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1015 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1016 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1017 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1018 including permitting officials of the United States to inspect premises, programs, and documents.

1019 (c) The Contractor makes this agreement in consideration of and for the  
1020 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1021 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1022 Reclamation, including installment payments after such date on account of arrangements for  
1023 Federal financial assistance which were approved before such date. The Contractor recognizes  
1024 and agrees that such Federal assistance will be extended in reliance on the representations and  
1025 agreements made in this Article, and that the United States reserves the right to seek judicial  
1026 enforcement thereof.

24. Omitted.

1027 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS  
1028 RELATING TO PROJECT WORKS

1029 25. In addition to all other payments to be made by the Contractor pursuant to this  
1030 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1031 detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1032 of direct cost incurred by the United States for work requested by the Contractor associated with  
1033 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies  
1034 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed

1035 to in writing in advance by the Contractor. This Article shall not apply to costs for routine  
1036 contract administration.

1037 WATER CONSERVATION

1038 26. (a) Prior to the delivery of water provided from or conveyed through  
1039 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1040 shall be implementing an effective water conservation and efficiency program based on the  
1041 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1042 the conservation and efficiency criteria for evaluating water conservation plans established under  
1043 Federal law. The water conservation and efficiency program shall contain definite water  
1044 conservation objectives, appropriate economically feasible water conservation measures, and  
1045 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1046 Contract shall be contingent upon the Contractor's continued implementation of such water  
1047 conservation program. In the event the Contractor's water conservation plan or any revised water  
1048 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not  
1049 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which  
1050 the Contracting Officer determines are beyond the control of the Contractor, water deliveries  
1051 shall be made under this Contract so long as the Contractor diligently works with the Contracting  
1052 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
1053 immediately begins implementing its water conservation and efficiency program in accordance  
1054 with the time schedules therein.

1055 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1056 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
1057 implement the Best Management Practices identified by the time frames issued by the California

1058 Urban Water Conservation Council for such M&I Water unless any such practice is determined  
1059 by the Contracting Officer to be inappropriate for the Contractor.

1060 (c) The Contractor shall submit to the Contracting Officer a report on the  
1061 status of its implementation of the water conservation plan on the reporting dates specified in the  
1062 then existing conservation and efficiency criteria established under Federal law.

1063 (d) At five-year intervals, the Contractor shall revise its water conservation  
1064 plan to reflect the then current conservation and efficiency criteria for evaluating water  
1065 conservation plans established under Federal law and submit such revised water management  
1066 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
1067 determine if the water conservation plan meets Reclamation's then-current conservation and  
1068 efficiency criteria for evaluating water conservation plans established under Federal law.

1069 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1070 shall be described in the Contractor's water conservation plan.

1071 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1072 27. Except as specifically provided in Article 17 of this Contract, the provisions of  
1073 this Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1074 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1075 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1076 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1077 any water user within the Contractor's Service Area acquires or has available under any other  
1078 contract pursuant to Federal Reclamation law.

1079 OPERATIONS AND MAINTENANCE BY NON-FEDERAL OPERATING ENTITY

1080 28. (a) Omitted.

1081 OPERATION AND MAINTENANCE OF PROJECT WORKS  
1082 BY THE CONTRACTOR

1083 28.1. (a) The Contractor, without expense to the United States, shall operate and  
1084 maintain the Project Works in full compliance with the Federal Reclamation laws and the terms  
1085 of this Contract. The provisions of this Article shall be implemented by the Memorandum of  
1086 Agreement relating to Details of Transfer Operations and Maintenance of Contra Costa Canal  
1087 System, dated June 28, 1972, and Amendment 1, dated May 15, 1995, and may be amended from  
1088 time to time in such manner that Project Works shall be maintained in good and efficient  
1089 condition. The Contractor shall use proper methods to assure the reasonable and beneficial use  
1090 of Water Delivered by means of Project Works. At any time the Contracting Officer determines  
1091 the O&M by the Contractor of one or more of the Project Works is insufficient, the United States  
1092 may take back the O&M of all or any part of such Project Works and the Contractor hereby  
1093 agrees to surrender possession of said Project Works. The O&M of such Project Works so taken  
1094 back for O&M may be retransferred to the Contractor upon the furnishing by the Contracting  
1095 Officer of a written notice of intention to retransfer O&M to the Contractor 90 days in advance  
1096 of the date of retransfer by the United States. Such transfer shall not be made until the Project  
1097 Works have been placed in efficient operating condition: Provided, That for Project Works  
1098 taken back by the United States for O&M, the Contractor shall pay the United States quarterly, in  
1099 advance, sufficient funds, on the basis of an estimate to be submitted by the Contracting Officer,  
1100 to finance the O&M of such Project Works. If the actual O&M costs should exceed the  
1101 estimated costs, the Contractor shall pay the United States the necessary additional sums of  
1102 money within 60 days after receipt of a bill submitted by the Contracting Officer to the  
1103 Contractor. Any surplus of advances by the Contractor shall be refunded or, at the option of the

1104 Contracting Officer, be applied against any obligation of the Contractor under this Contract due  
1105 at that time.

1106 (b) No substantial change in any of the Project Works or the installation of  
1107 Contractor facilities on the lands and rights of way of Project Works shall be made by the  
1108 Contractor without first obtaining the written consent of the Contracting Officer. The Contractor  
1109 shall promptly make at its expense any and all repairs or replacements to one or more of the  
1110 Project Works which the Contracting Officers determines are necessary for the proper O&M of  
1111 such Project Works. If at any time, in the opinion of the Contracting Officer one or more of the  
1112 Project Works shall from any cause be in a condition unfit for service, the Contracting Officer  
1113 may order that the water be shut off from that Project Works until, in the Contracting Officer's  
1114 opinion, said Project Works are put in proper condition for service. If the Contractor neglects or  
1115 fails to make necessary repairs or replacements, at the option of the Contracting Officer, such  
1116 repairs or replacements may be made by the United States and the cost therefore charged to the  
1117 Contractor. The Contractor shall repay such costs as a miscellaneous cost in accordance with  
1118 Article 25 of this Contract. The Contractor at its own expense shall repair any damage to the  
1119 Project Works resulting from negligence of its officers, employees, or agents.

1120 (c) From time to time the Contracting Officer, without cost to the Contractor,  
1121 may make a review of the maintenance of the Project Works in order to assist the Contractor in  
1122 determining the condition of those facilities and the adequacy of the maintenance program. The  
1123 review may include any or all of the Project Works. A report of each such review, including  
1124 recommendations, if any, shall be prepared and a copy shall be furnished to the Contractor. If  
1125 deemed necessary by the Contracting Officer or when requested by the Contractor, an inspection  
1126 of any of the Project Works and of the Contractor's books and records relating thereto may be

1127 made to ascertain whether the requirements of this Contract are being satisfactorily performed by  
1128 the Contractor or to assist the Contractor in solving specific problems. Any such inspection  
1129 shall, except in a case of emergency, be made after written notice to the Contractor and the actual  
1130 cost thereof shall be paid by the Contractor to the United States as a miscellaneous cost pursuant  
1131 to Article 25 of this Contract. The Contractor may participate in either the review or inspection.

1132 (d) The Contractor shall have the right to abandon one or more of the Project  
1133 Works with the prior written approval of the Contracting Officer: Provided, That abandonment  
1134 of one or more of the Project Works shall not relieve the Contractor of its obligation to repay the  
1135 capital cost plus interest as appropriate of such Project Works less any disposal or salvage value  
1136 which may be realized.

1137 (e) If and when the Contractor fully repays the United States the costs of one  
1138 or more of the Project Works and the ownership of such Project Works is transferred to the  
1139 Contractor pursuant to an Act of Congress, the provisions of subdivision (a), (b), (c), and (d) of  
1140 this Article and subdivision (c) of Article 17 shall no longer apply to such Project Works

1141 EMERGENCY RESERVE FUND

1142 28.2. (a) The Contractor shall accumulate and maintain a reserve fund, as set forth  
1143 in subdivision (b) below, which the Contractor shall keep available to pay O&M costs incurred  
1144 during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or  
1145 other emergencies threatening or causing interruption of water service.

1146 (b) The Contractor shall establish a reserve fund of not less than \$1,000,000 in  
1147 a Federally insured interest- or dividend-bearing account, or investments in securities guaranteed  
1148 by the Federal Government; Provided, That the money so deposited or invested shall be available  
1149 within a reasonable time to meet expenses for the purposes identified in subdivision (d) of this

1150 Article. Whenever said reserve fund is reduced below \$1,000,000 by expenditures therefrom, it  
1151 shall be restored to that amount by accumulation of annual deposits at a minimum of \$250,000.  
1152 The interest earnings shall continue to accumulate and be retained as part of the reserve fund  
1153 except when required to meet expenditures pursuant to subdivisions (a) and (d) of this Article.

1154 (c) By written agreement between the Contractor and the Contracting Officer,  
1155 the basic amount of the reserve fund may be adjusted to account for risk and uncertainty  
1156 stemming from the size and complexity of the Project Works, the size of the Contractor's annual  
1157 O&M budget and O&M costs not contemplated when this Contract was executed.

1158 (d) The Contractor may withdraw money from the reserve fund only for  
1159 meeting unusual O&M costs incurred during periods of stress as described in subdivision (a)  
1160 above, and unforeseen extraordinary O&M costs, unusual or extraordinary repair or replacement  
1161 costs, and betterment costs (in situations where recurrence of severe problems can be eliminated)  
1162 during periods of special stress. The Contractor shall notify the Contracting Officer of any  
1163 expenditure from the reserve fund pursuant to this subdivision.

1164 TRANSFER OF TITLE TO PROJECT WORKS

1165 28.3. Upon repayment of all outstanding capitalized costs of one or more of the Project  
1166 Works, and upon appropriate authorization of Congress, all rights, title, and interests in and to  
1167 the relevant Project Work(s) shall be transferred to the Contractor.

1168 PERFORMANCE OF PROJECT WORKS WITH CONTRIBUTED FUNDS

1169 28.4. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the  
1170 Contracting Officer may accept funds contributed by the Contractor to finance any authorized  
1171 construction work on the Project facilities not otherwise provided for by this Contract for which  
1172 funds may not be available. Pursuant to the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. §

1173 397a), the Contracting Officer may also accept funds contributed by the Contractor to finance  
1174 any authorized O&M work on the Project facilities not otherwise provided for by this Contract  
1175 for which funds may not be available. When the undertaking of such work is approved, funds  
1176 therefore shall be advanced by the Contractor as may be directed by the Contracting Officers and  
1177 there shall be submitted to the Contracting Officer a certified copy of the resolution of the Board  
1178 of Directors of the Contractor describing the work to be done and authorizing its performance  
1179 with contributed funds.

1180 (b) After completion of any work on Project facilities financed in whole or in  
1181 part with funds contributed by the Contractor under subdivision (a) of this Article, the Contractor  
1182 shall be furnished with a statement of the final cost thereof. Any unexpended balance of funds  
1183 shall be refunded to the Contractor or applied as otherwise directed by the Contractor. The  
1184 amount by which the cost of such work exceeds the amount of funds advanced by the Contractor  
1185 therefore shall be paid by the Contractor to the United States as the Contracting Officer may  
1186 direct.

1187 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1188 29. The expenditure or advance of any money or the performance of any obligation of  
1189 the United States under this Contract shall be contingent upon appropriation or allotment of  
1190 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1191 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1192 not appropriated or allotted.

1193 BOOKS, RECORDS, AND REPORTS

1194 30. (a) The Contractor shall establish and maintain accounts and other books and  
1195 records pertaining to administration of the terms and conditions of this Contract, including: the  
1196 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1197 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1198 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1199 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1200 Officer may require. Subject to applicable Federal laws and regulations, each party to this

1201 Contract shall have the right during office hours to examine and make copies of the other party's  
1202 books and records relating to matters covered by this Contract.

1203 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1204 books, records, or other information shall be requested from the Contractor by the Contracting  
1205 Officer unless such books, records, or information are reasonably related to the administration or  
1206 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1207 time within which to provide the requested books, records, or information.

1208 (c) Omitted.

1209 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1210 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1211 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1212 therein shall be valid until approved in writing by the Contracting Officer.

1213 (b) The assignment of any right or interest in this Contract by either party  
1214 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1215 written concurrence of said other party.

1216 (c) The Contracting Officer shall not unreasonably condition or withhold  
1217 approval of any proposed assignment.

1218 SEVERABILITY

1219 32. In the event that a person or entity who is neither (i) a party to a Project contract,  
1220 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
1221 an association or other form of organization whose primary function is to represent parties to  
1222 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1223 enforceability of a provision included in this Contract and said person, entity, association, or  
1224 organization obtains a final court decision holding that such provision is legally invalid or  
1225 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),

1226 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such  
1227 final court decision identify by mutual agreement the provisions in this Contract which must be  
1228 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).  
1229 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1230 the completion of the actions designated above, to the extent it can do so without violating any  
1231 applicable provisions of law, the United States shall continue to make the quantities of Project  
1232 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1233 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1234 RESOLUTION OF DISPUTES

1235 33. Should any dispute arise concerning any provisions of this Contract, or the  
1236 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1237 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1238 Officer referring any matter to the Department of Justice, the party shall provide to the other  
1239 party 30-days written notice of the intent to take such action; Provided, That such notice shall not  
1240 be required where a delay in commencing an action would prejudice the interests of the party  
1241 that intends to file suit. During the 30-day notice period, the Contractor and the Contracting  
1242 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically  
1243 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor  
1244 or the United States may have.

OFFICIALS NOT TO BENEFIT

1245 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1246 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1247 manner as other water users or landowners.

1248 CHANGES IN CONTRACTOR'S SERVICE AREA

1249 35. (a) While this Contract is in effect, no change may be made in the  
1250 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,  
1251 or otherwise, except upon the Contracting Officer's written consent.

1252 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1253 Officer will notify the Contractor of any additional information required by the Contracting  
1254 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1255 schedule for timely completion of the process. Such process will analyze whether the proposed  
1256 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1257 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1258 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)  
1259 have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1260 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be  
1261 responsible for all costs incurred by the Contracting Officer in this process, and such costs will  
1262 be paid in accordance with Article 25 of this Contract.

1263 FEDERAL LAWS

1264 36. By entering into this Contract, the Contractor does not waive its rights to contest  
1265 the validity or application in connection with the performance of the terms and conditions of this  
1266 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1267 the terms and conditions of this Contract unless and until relief from application of such Federal  
1268 law or regulation to the implementing provision of the Contract is granted by a court of  
1269 competent jurisdiction.

1270 NOTICES

1271 37. Any notice, demand, or request authorized or required by this Contract shall be  
1272 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

1273 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1274 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1275 to the Board of Directors, Contra Costa Water District, P. O. Box H<sub>2</sub>O, Concord, California  
1276 94524. The designation of the addressee or the address may be changed by notice given in the  
1277 same manner as provided in this Article for other notices.

1278 CONFIRMATION OF CONTRACT

1279 38. The Contractor, after the execution of this Contract, shall furnish to the  
1280 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor  
1281 is a legally constituted entity, and the Contract is lawful, valid, and binding on the Contractor.

1282 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1283 and year first above written.

1284 THE UNITED STATES OF AMERICA

1285 By: \_\_\_\_\_  
1286 Regional Director, Mid-Pacific Region  
1287 Bureau of Reclamation

1288 (SEAL)

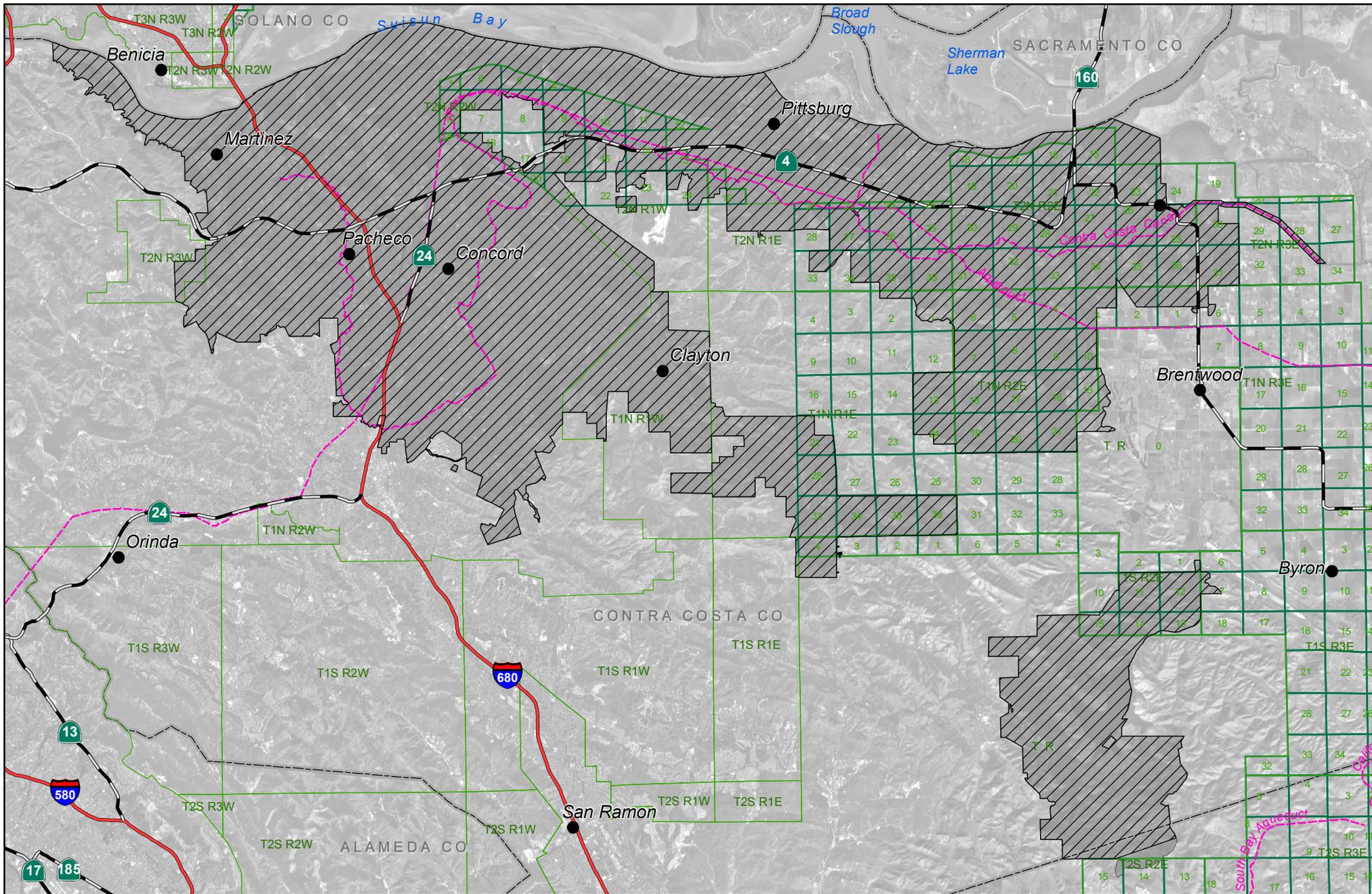
1289 CONTRA COSTA WATER DISTRICT

1290 By: \_\_\_\_\_  
1291 President of the Board of Directors

1292 Attest:

1293 By: \_\_\_\_\_  
1294 Secretary of the Board of Directors

1295 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\11-30-04 Contra Costa WD Final Draft  
1296 LTRC with exhibits.doc)

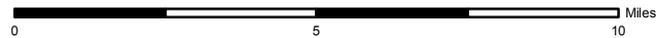


-  District Boundary
-  Contractor's Service Area

# Contra Costa Water District

Contract No. I75r-3401A-LTR1

Exhibit A



214-202-796

EXHIBIT B  
CONTRA COSTA WATER DISTRICT  
2004 Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

	<u>Central Valley Project</u>	<u>*Non-Project Water</u>		<u>Other</u>
	<u>M&amp;I</u>	<u>Los Vaqueros</u>	<u>M&amp;I</u>	<u>M&amp;I</u>
<u>COST-OF-SERVICE RATES:</u>				
Capital Rates	\$10.75	\$ 1.24		
O&M Rates:				
Water Marketing	\$ 5.01	\$ 5.01	\$ 5.01	
Storage	\$ 6.38			
San Luis Drain				
Direct Pumping	\$ 3.70	\$ 3.70		
Conveyance				
Conveyance Pumping				
Total O&M Rates	\$15.09	\$ 9.95	\$ 5.01	
Deficit Rates:				
Non-Interest Bearing	N/A	N/A	N/A	
Interest Bearing	\$10.49	N/A	N/A	
Total Deficit Rate	\$10.49	N/A	N/A	
Cost-Service Rate	<u>\$36.33</u>	<u>\$ 9.95</u>	<u>\$5.01</u>	

FULL COST RATES as defined in Reclamation Reform Act (96 Stat. 1263):

<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	N/A	N/A	N/A
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	N/A	N/A	N/A

CHARGES UNDER P.L. 102-575 TO RESTORATION FUND: \*\*

Restoration Payments [Section 3407(d)(2)(A)]	\$15.64	N/A	N/A
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\* Non-Project Rates/Chares may be modified by various methods on a CVP-Wide Basis at some future point.

\*\* The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P. L. 102-575 are on a fiscal year basis (10/1-9/30).

HISTORIC USE as defined in CVP M&I Water Shortage Policy:

Recent Historic Average - 152,100